

## **TITLE 14. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION**

[Notice published June 15, 2007]

### **NOTICE OF PROPOSED RULEMAKING**

The California Department of Parks and Recreation (Department) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

#### **PUBLIC HEARING**

The Department has scheduled a public hearing on this proposed action starting at 9:00am on July 31, 2007, at Rush Park Community Center located at 7801 Auburn Blvd. Citrus Heights, California 95610. The Community Center is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at **5:00 pm on July 31, 2007**. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Ms. Debra Gonzalez  
Office of Grants and Local Services  
California Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296-0001  
Email: [dgonzalez@parks.ca.gov](mailto:dgonzalez@parks.ca.gov)  
Fax: (916) 653-6511  
Phone: (916) 654-1618

#### **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) Section 5003 and PRC Section 5072.8(c) authorize the Department to adopt the proposed regulation, which would implement, interpret, or make specific PRC Section 5072.8, 23 U.S.C. 104 (h), and 23 U.S.C 206.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Recreational Trails Program (RTP) was established in 1991 with the passage of the National Recreational Trails Fund Act Part B of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA has been repealed but the RTP has been continued with the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Public Resources Code (PRC) Section 5072.8 was enacted by the Statutes of 1992, Chapter 964 to enable California to participate in the RTP. This statute established a State fund in which the funds received from the federal government could be deposited. It also defined eligible applicants, eligible projects, and how the funds were to be divided between motorized and non motorized recreational trail projects. Public Resources Code Section 5072.8 was recently amended by the Statutes of 2006, Chapter 574 adding federal government agencies as another eligible applicant. Even though PRC Section 5072.8 was chaptered in 1992, regulations for the RTP were never submitted to the rule making process.

The Department proposes to adopt Section 4860 in Title 14 of the California Code of Regulations (CCR). This section concerns the Recreational Trails Program.

The purpose of the proposed regulation is to incorporate by reference the Procedural Guide for the federal Recreational Trails Program Final Draft June 4, 2007.

Section 4860 will establish implement, interpret, and make specific PRC Section 5072.8 and to incorporate recent changes in statute. Specifically it will establish eligibility, application, grant selection and grant administration requirements for the Recreational Trails Program.

## FEDERAL REGULATION AND STATUTE CONFORMITY

The RTP is established on the federal level by The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Title 23, United States Code, Section 104(h) and Section 206]. There are no federal regulations or court cases that address the same issue.

Differences exist between the state and federal statutes as follows:

1. Federal statute [23 U.S.C. 206 (d)(2)] authorizes the following types of motorized and non motorized trail projects but state statute [PRC Section 5072.8 (b)] limits them solely to motorized trail projects:
  - a. The maintenance and restoration of existing recreational trails
  - b. The purchase and lease of recreational trail construction and maintenance equipment
  - c. The assessment of trail conditions for accessibility and maintenance

- d. The development and dissemination of publications and operation of educational programs to promote safety and environmental protection.
2. Federal statute [23 U.S.C. 206 (d)(4)(A)] establishes that the State can make grants under this program to private organizations, municipal, county, State, and Federal government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee. State statute [PRC Section 5072.8 (a)] narrows the list of eligible entities to cities, counties, districts, state and federal agencies and non profit organizations with management responsibilities over public lands.
3. State statute [PRC Section 5072.8 (c)] requires that applicants certify that the project is not required as a mitigation measure as a condition for a permit or other entitlement. Federal statute does not have that limitation.
4. State statute [PRC Section 5072.8 (d)(1)] requires grantees to operate and maintain properties improved or purchased with Recreational Trails Funds in perpetuity. In the case of lands not held in fee by the grantee, perpetuity shall be in accordance with the tenure or for the length of time sufficient to provide public benefits commensurate with the type and duration of interest in the land held by the grantee. Federal statute does not have a minimum timeframe for a trail project to remain open to the public.

The Department finds that it is authorized to adopt a regulation that differs from federal statute. Federal statute allows each state to develop laws, policies and administrative procedures for the RTP (23 U.S.C. 206 (d)(1)(A)). The proposed regulation mirrors the provisions found in State statute.

#### INCORPORATION BY REFERENCE

The purpose of the proposed regulation is to incorporate by reference the Procedural Guide for the federal Recreational Trails Program Final Draft June 4, 2007.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the State: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None. Only California governmental organizations and non profit organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program. Government Code Section 11342.610(b)(6) excludes non profit organizations from the definition of a small business.

Cost impacts on a representative private person or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of this regulation will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Effect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Business reporting requirement: None.

Small business determination: The Department has determined that the proposed regulation does not affect small business. Only California governmental organizations and non profit organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program. Government Code Section 11342.610(b)(6) excludes non profit organizations from the definition of a small business.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5 (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

## CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Debra Gonzalez  
Office of Grants and Local Services  
Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296-0001  
Email: [dgonzalez@parks.ca.gov](mailto:dgonzalez@parks.ca.gov)  
Fax: (916) 653-6511  
Phone: (916) 654-1618

The backup contact person for these inquiries is:

Richard Rendón  
Office of Grants and Local Services  
Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296-0001  
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Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Debra Gonzalez at the above address.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department will have the entire rulemaking file available for inspection and copying throughout the rule making process at its office at the above address. As the date of the notice is published in the Notice Register, the rule making file consists of (1) this notice, (2) the proposed text of the regulation, (3) the Procedural Guide for the federal Recreational Trails Program Final Draft June 4, 2007, (4) the initial statement of reasons, (5) the Procedural Guide for the federal Recreational Trails Program Final Draft January 25, 2007, (6) the Procedural Guide Recreational Trails Program under the Transportation Equity Act for the 21<sup>st</sup> Century (March 1999), (7) the Procedural Guide for the Recreational Trails Program Under the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (June 1, 2006), (8) the Recreational Trails Program 2006 Procedural Guide Development Process and Documents binder, (9) training material from the Federal Highway Administration (FHWA) concerning the Transportation Planning Process, (10) a draft copy of the Recreational Trails Program (RTP) CEQA/NEPA Determination Form from the FHWA,

(11) a draft copy of the Recreational Trails Program (RTP) Project Application CEQA/NEPA Determination Form Instructions from the FHWA, (12) a copy of the Preliminary Environmental Study (PES) Form from the FHWA, (13) a copy of the Recreational Trails Program Project Application Preliminary Environmental Study (PES) Form Instructions from the FHWA, (14) a copy of a FHWA webpage titled “Program Summary – Recreational Trails Program - FHWA”, (15) a copy of a Federal Highway Administration webpage titled “Program Legislation – Recreational Trails Program – FHWA”, (16) a copy of a FHWA webpage titled “Program Guidance, Part 1 – Recreational Trails Program – FHWA”, (17) a copy of a FHWA webpage titled “SAFETEA-LU – Fact Sheets – Recreational Trails Program”, and (18) the Draft Recreational Trails Program Guidance Draft for Review, October 14, 2006 from the FHWA. Copies may be obtained by contacting Debra Gonzalez at the address or phone number listed above.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Debra Gonzalez at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Debra Gonzalez at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at [www.parks.ca.gov](http://www.parks.ca.gov) and by following the link to *Grants and Bond Acts*.